

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 28th October, 2015

Special Sitting

*(Convened via Kenya Gazette Notice
No.8100 of 27th October, 2015)*

*The Senate met at the Senate Chamber,
Parliament Buildings, at 11.00 a.m.*

[The Speaker (Hon. Ethuro) in the Chair]

COMMUNICATION FROM THE CHAIR

PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF MURANG'A COUNTY

The Speaker (Hon. Ethuro): Hon. Senators, I have the following Communication to make on the proposed removal from office by impeachment of the Governor of Murang'a County.

Hon. Senators, by a letter received in the Office of the Speaker of the Senate on Wednesday, 21st October, 2015, the Speaker of the County Assembly of Murang'a informed the Speaker of the Senate of the approval of a Motion by the County Assembly of Murang'a for the removal from office, by impeachment, of the Governor of Murang'a County.

In terms of Article 181 of the Constitution, Section 33(3)(a) of the County Governments Act, 2012 and Standing Order No.68 (1) (a) of the Senate Standing Orders, the Speaker of the Senate is required, and I quote"-

"Within seven days after receiving notice of a resolution from the Speaker of a county assembly, to convene a meeting of the Senate to hear charges against the Governor."

Hon. Senators, pursuant to Section 33(3)(a) of the County Governments Act, 2012 and Standing Order No.68(1)(a) of the Senate Standing Orders, I convened this sitting of the Senate through Kenya Gazette Notice No.8100, published on 27th October, 2015.

Hon. Senators, pursuant to Section 33(3) of the County Governments Act, 2012 and the same Standing Order of the Senate, I hereby proceed to read the charges against Hon. Mwangi wa Iria, the Governor of Murang'a County.

Ground 1: Gross Violation of the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005.

Particulars include, and I hope Sen. Hassan Omar Hassan is listening attentively as per yesterday's intervention:-

(i) Lack of accountability for the management and use of county resources by incurring unsustainable debts to the tune of Kshs2.5 billion which were not disclosed in the Debt Management Paper, 2015 and the County Fiscal Strategy Paper, 2015, thus violating Article 201(e) of the Constitution of Kenya, 2010, Section 123 and Section 107(2) (e) of the Public Finance Management Act, 2012. Further scrutiny of the Debt Owing Report submitted by the County Executive Committee Member for Finance, IT and Planning as at 14th August, 2015 indicated violation of Article 226(5) of the Constitution of Kenya, 2010, since some programmes in the debt report already had an appropriation in the budget for the Financial Year 2014/2015 only to re-appear in the said debts, a clear indication of misappropriation of funds for the projects. For instance, Gakoigo Stadium, under the Department of Youth and Sports, was allocated Kshs30 million in the Financial Year 2014/2015 yet it had incurred a total debt of Kshs59 million and no monies had been paid. This positions the county at a very precarious situation which may lead to the auctioning of county assets.

(ii) Violation of Article 201(a) and (d) of the Constitution of Kenya, 2010, that stipulates principles of public finance and Section 5 and 130(1)(b)(i) of the Public Finance Management Act, 2012. The County Governor allowed misappropriation of county funds by spending public funds in private commercial entities. The report of the Auditor-General on the financial operations of Murang'a County Executive for the period 1st July, 2013 to 30th June, 2014, shows that the County Executive contributed a total of Kshs28,489,800 to Murang'a Investment Co-operative Society *Shilingi kwa Shilingi*. The expenditure was incurred in respect of advertisements to promote the co-operative society and invite the general public to purchase shares in the co-operative. Further details of the same are contained in the Report of the County Assembly on the Murang'a Investment Cooperative Society, *Shilingi kwa Shilingi*.

The Society is registered under the Co-operative Societies Act, Cap.490, Section 6(3) of the Laws of Kenya. The Society is an autonomous body independent of the County Executive and according to the Auditor-General's Report, it was not clear, therefore, the circumstances under which the County Executive was funding it. This was in contravention of Section 5(1) of the Public Finance Management Act, 2012 as the Society was not declared a county corporation.

Let me allow the Members to enter.

(Several hon. Senators entered the Chamber)

(iii) Violation of the Constitution of Kenya, 2010, Articles 201(a), (d), (e), on the principles of public finance and Article 226(5) on audit of public entities, Article 227(1) on procurement of goods and services and the Public Procurement and Disposal Act, 2005 by failing to adhere to the principles of public finance management and

procurement of public goods and services. In the Financial Year 2014/2015, as stated in the County Governments Budget Implementation Review Reports of the Controller of Budget, the County Executive, under the stewardship of the County Governor, incurred advertisement expenditure amounting to Kshs247 million against an approved budget of Kshs7 million as at 31st March, 2015 - that is, Kshs114 million and Kshs133 million in the half year and third quarter report, respectively – thus, further undermining the principles of fiscal prudence as stipulated in Article 201(d) of the Constitution of Kenya, 2010 and Section 107(2) of the Public Finance Management Act of 2012.

(iv) Violation of Article 183(2) and (3) of the Constitution of Kenya, 2010 and Section 30(3)(b) of the County Governments Act, 2012 through failure to provide leadership to the County Executive Committee on the generation of county policies, plans, legislations and full and regular reports, regarding key programmes such as the Napier Grass, A.I. Crushes, among others.

(v) Failure to establish the County Budget and Economic Forum as stipulated under Section 137 of the Public Finance Management Act 2012. As a result, the County Governor has failed to consult with the public over the preparation of county plans, budgets, economy and financial management at the county level thereby violating the provisions of Sections 87, 91 and 115 of the County Governments Act, 2012 and more importantly, Articles 10 of and 201(a) of the Constitution that require public participation in decision making.

(vi) Violation of Articles 176(1) and 185 of the Constitution of Kenya, 2010 by disregarding the County Assembly as an arm of the County Government and undermining its legislative authority, through requisition of monies and not remitting the same, hence crippling the operations of the Assembly and undermining the independence of the latter. This, by extension, violates Articles 6 and 10 of the Constitution of Kenya, 2010 that underpins the spirit of mutual respect, cooperation and consultation on all governance structures. This is evident from requisitions made in the following periods that were never remitted:-

(a) Kshs44,347,764 in the Financial Year, 2013/2014 (annexed);

(b) Kshs28,779,000 in the Financial Year 2014/2015 (annexed), and;

(c) Kshs51, 843,000 in the Financial Year 2015/2016 (annexed).

This misappropriation and misdirecting of funds indicates lack of good intentions towards the Assembly and creating a monarchy system, an endeavour to curtail the oversight role of the Assembly, violating Article 73(b) of the Constitution of Kenya, 2010 which requires a state officer to serve the people and not power to rule over them. This further violates Article 174 of the Constitution of Kenya 2010, which requires county governments to provide democratic and accountable exercise of power.

(vii) Violation of Section Four of the County Governments Act, 2012, that requires the County Executive Committee to develop legislation on county symbols, for example, the Murang'a County Symbols Act. After the Murang'a County Symbols Bill was passed in the Assembly and consequently gazetted into an Act, the County Executive so far has failed to implement the approved symbols in all their communication artefacts.

(viii) Violation of Article 227(1) of the Constitution of Kenya 2010. It was done through procurement of goods and services by state organs and public entities and

Section 135(1) of the Public Finance Management Act 2012, by disregarding cost effectiveness and over-spending in the departments of Finance, IT and Economic Planning, Transport, Energy, Infrastructure, Public Service and Administration, among others, as indicated in the Third Quarter Budget Review Implementation Report for the FY2014/2015 from the Office of the Controller of Budget. Such expenditure should have been ratified through a supplementary budget or justified by the respective departments

(ix) Violation of Articles 186(1), 189(2) and 226(5) of the Constitution of Kenya 2010 by approving/directing/diverting public funds to non-devolved functions contrary to Schedule 4(2) of the Constitution of Kenya 2010. For example, construction works at Kahuhia Girls High School that were split nine times, amounting to Kshs31 million. Also, conversion of public primary schools into boarding schools, among others.

(x) Violation of Article 227(1) of the Constitution of Kenya 2010 and Section 30 of the Public Procurement and Disposal Act, 2005 through splitting of tenders with different LPO numbers for the same contractor. For instance, the proposed opening of Kahuruko-Ngatho Junction under the Department of Transport and Infrastructure was split 11 times with different LPO numbers according to the debt owing report from the County Executive Committee Member (CEC), Finance, IT and Planning as at 14th August, 2015.

(xi) Violation of Articles 10, 183 and 201 of the Constitution of Kenya 2010 on priorities through public participation, legislative framework and fiscal prudence and accountability, respectively. Also, Section 29 of the Public Procurement and Disposal Act, 2005, through evading of open tender method by purchasing of land along the Kenol-Kabati Road worth Kshs340 million through request for quotations, without stipulated reasons for using alternative procurement procedures in writing by the Tender Committee. Fraudulent procurement procedures of the Artificial Insemination (AI) crushes under the Livestock Development Programme amounting to Kshs61,690,000, among other goods and services.

(Sen. Haji and Sen. (Prof.) Anyang'-Nyong'o bowed to the Bar and entered into the House when the Speaker was on his feet)

(xii) Contravention of Article 201(a) and (e) of the Constitution of Kenya 2010, on principles of public finance in regard to accountability, responsible finance management and clear fiscal reporting and Section 155(5) of the Public Finance Management Act, 2013, by failing to ensure that an Internal Audit Committee is established. This has exposed the County Executive operations to lack of checks and balances in financial controls, especially in the County Treasury and lack of decentralized payment systems, particularly in the departmental level. This is evidenced by irregular practices such as the opening of unauthorized bank accounts, contrary to the guidelines of the Transition Authority, lack of maintaining of cashbooks for some accounts and surrendered imprests, lack of adherence to the budget implementation, among other irregularities, also highlighted in the report of the Auditor General 2013/2014 and the Controller of Budget Third Quarter Report 2013/2014. This heightened impunity on the part of the County Governor has resulted in continued loss of public funds.

What is it, Sen. Khaniri?

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. I just want to bring to your attention something you did not see when you were making your communication. Two very senior Members of this House and very experienced, committed a gross violation of our Standing Orders. They bowed at the Bar while you were making the communication and proceeded to take their seats. Is this in order?

(Loud Consultations)

The Speaker (Hon. Ethuro): Order, Members! I will address myself to that matter at the end of reading the charges.

(Laughter)

Ground 2: Crimes under National Law

The County Governor committed serious crimes under national law in the following way;

- (i) Violation of Article 212 of the Constitution of Kenya, 2010, and Section 58 of the Public Finance Management Act, 2012, by borrowing a loan of Ksh200 million from Kenya Commercial Bank (KCB) without guarantee by the National Treasury. The said loan was not factored in the Debt Strategy Paper of the County Government of Murang'a over the Medium Term Expenditure Framework, contrary to Section 140(1)(d) of the Public Finance Management Act.
- (ii) Contrary to Article 201(d) of the Constitution of Kenya, 2010, that requires public money to be used in a prudent and responsible way, the County Executive irregularly purchased hay for cows at the controversial Mariira Farm.
Further investigations reveal that there was no documented evidence for release and delivery of the 20,000 bales of hay resulting to loss of public funds amounting to Kshs4 million. This criminal undertaking is clearly substantiated in the Auditor General's Report for the period July 1, 2013 – June 30, 2014.
- (iii) Contravention of Articles 201(d) and 227(1) of the Constitution of Kenya, 2010, that requires a state organ or any other public entity to contract goods or services in accordance with the system that is fair, equitable and cost effective. Additionally, violation of Section 29 of the Public Procurement and Disposal Act 2005 by incurring exorbitant costs of advertisement amounting to Kshs247million, glaringly inclined to one company, *Top Image Media* according to the Report of the Controller of Budget for the 2014/2015 Financial Year.
This spells gross irregularities in the operations of the county executive in procurement of media services intentionally skewed towards one particular company. Further scrutiny by the County Assembly reveals that the County Executive has continuously evaded the use of open tendering in procurement of goods and services.
- (iv) Violation of Article 41(1) of the Constitution of Kenya, 2010, that stipulates the rights of every person to fair labour practices and Section 19 of the Employment Act, 2012, through failure to remit statutory deductions of the defunct local

authorities which have continued to attract interests and penalties to a tune of Ksh131,615,210.

Ground 3: Abuse of Office/Gross Misconduct

The County Governor of Murang'a exhibited gross-misconduct, abused his office in the following ways:-

(i) Violation of Article 75(1) of the Constitution on the conduct of state officers and Section 13 of the Leadership and Integrity Act using public funds to brand his name that is evident in the enormous advertisements in the vernacular stations and billboards erected along the roads and at Ihura Stadium Gate. The Governor has continued to misappropriate public funds for personal branding in every advertisement made by the county. For instance, the front page of the printed examination cited 'Murang'a County Post Mock Examination' for the year 2014/2015 bear the name of the Governor, insinuating that he is the sole sponsor of the program and not the County Government.

(ii) Pretentious realignment of departments and programs within departments that had not exhausted their budgets hence disregarding avenues that have been provided for by law as manifested during the Supplementary Budget for FY 2014/2015, thus causing confusion and hindering effective budget implementation of programs, particularly in the departments of trade, industry, commerce, agro-marketing, cooperatives, agriculture and livestock.

(iii) Appointment of Mr. Christopher Ngera as the Chief Officer for Education and Technical Training Department who had been rejected by the County Assembly, contrary to Article 185 of the Constitution of Kenya and Section 45(1) (b) of the County Governments Act, 2012; thus defrauding public funds through payments of allowance/salaries to the said Chief Officer for the period he was illegally in office.

(iv) Use of personal portraits in county funded projects, contrary to Article 73(1) (a) (i) and (iv) on Public Trust, Article 75(1) of the Constitution of Kenya and Section 13 of the Leadership and Integrity Act.

(v) Loss of public funds through payment of eight ghost workers and lack of a precise inventory of the staff establishment as indicated in the Report of the Auditor-General 2013/2014 contrary to Article 226(5) of the Constitution of Kenya.

(v) Failure to appoint a substantive Chairperson of the County Public Service Board and allowing the Vice Chairperson to occupy the said office for an undefined period, contrary to Section 64(2) of the County Governments Act, 2012.

(vii) The Governor failed in his duty to Gazette all the County Executive Committee members whom we appointed on different dates in accordance with Section 30(2) (i) of the County Governments Act, 2012.

(viii) Contrary to the provisions of Section 30(1) (j) of the County Governments Act, 2012, the County Governor since inception of the County Government, has never submitted to the Murang'a County Assembly any implementation status report of county policies and plans.

(ix) The County Governor has continuously displayed negligence in his duties by failing to issue Gazette Notices of all important formal institutions made by him and of the County Executive Committee pursuant to Section 30(1) of the County Governments Act, 2012.

Hon. Senators, Section 33(b) of the County Governments Act and Standing Order No. 68(1) (b) both provide that the Senate by resolution may appoint a Special Committee comprising 11 of its Members to investigate the matter.

You will also observe that in today's Order Paper, pursuant to these provisions, the Senate Majority Leader will be giving a Notice of Motion for the establishment of a Special Committee. You will also observe that the Motion has been, with the approval of the Speaker, listed on the Order Paper.

Hon. Senators, should the Motion for the establishment of the Special Committee pass, the Committee will be required under Section 33(4) of the County Governments Act and Standing Order No. 68 (ii) to investigate the matter and to report to the Senate within 10 days on whether it finds the particulars of the allegations against the Governor to have been substantiated. If, however, the Motion for the establishment of a Special Committee does not pass, the Senate shall proceed to investigate and consider the matter in Plenary. The resolution of the Senate on the Motion by the Senate Majority Leader will therefore determine the manner in which this matter shall henceforth proceed.

It is noteworthy, and I wish to emphasize to Hon. Senators, that the debate on the Motion shall be limited to the substance of the Motion, namely; whether to establish a Special Committee consisting of the Senators listed to investigate the proposed removal of the Governor of Murang'a County. It is not a Motion on the propriety, prudence, the constitutionality or the illegality of the process that has preceded the submission of this matter to the Senate. Neither is it a debate on the facts of the matter or their merits. It is, therefore, not permissible to debate to any matters other than the Motion before the House.

Hon. Senators, I have previously said in this House that the hearing of charges for the proposed removal from office of a state officer is one of the most important and also most solemn functions of the Senate under our Constitution. I therefore urge you once again that the Senate exercises the highest level of responsibility and circumspection on this matter in the plenary and also, should the Motion by the Senate Majority Leader pass, then the Special Committee.

I thank you.

(Loud Consultations)

Sen. Khaniri: On a point of order. Mr. Speaker, Sir, Sen. Haji and my teacher, Sen. (Prof.) Anyang'-Nyong'o, in total disregard of Standing Order No. 105 walked into the Chamber and sat while you were making a Communication. We pray for your ruling on this matter.

The Speaker (Hon. Ekwee Ethuro): The two Senators mentioned, can you confirm or deny?

Sen. Haji: Mr. Speaker, Sir, I do not want to lie. I accept with very good reason. You looked at us twice and the third time you eluded.

(Laughter)

Both of us are elderly and sickly. We thought you allowed us to walk in. We bowed and we walked in. So, if we made a mistake, please forgive us.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I concur with my colleague but about the elderly, I dispute, and the sickly, I totally reject

(Laughter)

We had been standing for quite some time. We consulted and agreed that you were so absorbed in reading the communication that it would be unfair for us to wait for you until you reach a point where you could pause and let us in. Discretionally, we begged you without speaking to let us in. I apologise for contravening the Standing Orders.

(Loud consultations)

The Speaker (Hon. Ekwee Ethuro): Order Senators. Listening to Sen. Haji, I was beginning to be sympathetic but when it was the turn of Sen. (Prof.) Anyang'-Nyong'o, he discounted all the mitigating factors; chiefly, sickly and elderly. I did not see them collapsing while walking to the Chamber. I saw them walk majestically, healthy and sound. The rules of the House are yours. My job is very simple; just to enforce them. I appreciate your circumstance and apologies but you have to go back to where you stood and enter properly. That is how charitable I can get.

(Sen. Haji went back and bowed to the Chair)

(Applause)

NOTICE OF MOTION

ESTABLISHMENT OF A SPECIAL COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT OF THE GOVERNOR OF MURANG'A COUNTY

Sen. Keter: Mr. Speaker, Sir, I beg to give notice of the following Motion.

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on 21st October, 2015, the County Assembly of Murang'a approved a Motion "to remove from office, by impeachment," the Governor of Murang'a County;

AND FURTHER, WHEREAS by letter dated 21st October, 2015 (Ref. No. MCA/SPK/08/CON/3) and received in the Office of the Speaker of the Senate on 22nd October, 2015, the Speaker of the County Assembly of Murang'a informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b), the Senate resolves to establish a special committee comprising the following Senators –

1. Sen. Billow Kerrow
2. Sen. Abu Chiaba
3. Sen. (Prof.) John Lonyangapuo
4. Sen. Muriuki Karue
5. Sen. Stephen Sang'
6. Sen. Fatuma Dullo
7. Sen. Janet Ong'era
8. Sen. David Musila
9. Sen. Catherine Mukiite
10. Sen. Stewart Madzayo
11. Sen. Moses Kajwang';

to investigate the proposed removal from office of the Governor of Murang'a County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

MOTION

ESTABLISHMENT OF A SPECIAL COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT OF THE GOVERNOR OF MURANG'A COUNTY

Sen. Keter: Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 21st October, 2015, the County Assembly of Murang'a approved a Motion "to remove from office, by impeachment," the Governor of Murang'a County;

AND FURTHER, WHEREAS by letter dated 21st October, 2015 (Ref. No. MCA/SPK/08/CON/3) and received in the Office of the Speaker of the Senate on 22nd October, 2015, the Speaker of the County Assembly of Murang'a informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b), the Senate resolves to establish a special committee comprising the following Senators –

1. Sen. Billow Kerrow
2. Sen. Abu Chiaba
3. Sen. (Prof.) John Lonyangapuo
4. Sen. Muriuki Karue
5. Sen. Stephen Sang'
6. Sen. Fatuma Dullo
7. Sen. Janet Ong'era
8. Sen. David Musila
9. Sen. Catherine Mukiite
10. Sen. Stewart Madzayo
11. Sen. Moses Kajwang';

to investigate the proposed removal from office of the Governor of Murang'a County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

Mr. Speaker, Sir, as you had said in your communication, this is a straightforward matter and I am requesting my colleagues to approve the names of the Members in line with what we have done in the past. In the spirit of fairness to the Governor, we should be informed on the allegations mentioned. Going by the names, some of these Members have been in other impeachment committees. It is prudent for continuity and speedy investigation that we include the names of those who have served previously in impeachment committees. This will make the work of the Committee effective so that we can get the report on time.

Mr. Speaker, Sir, you remember that the first impeachment took a long time because all the committee members were new but the second and the third ones were a bit fast because we included old and new Members. I know some Members may ask why some Members are here and yet they have appeared in previous committees.

Going by the list, these are Members who are able, I know all of us are able and there is nobody who is lesser than another in this House. All the 67 of us are able to serve in this Committee. I, therefore, request my colleagues to approve these names so that they can elect the officials of the Committee and adhere to the timelines.

I do not want to take much time because it is a straightforward Motion. I want to kindly request the Senate Minority Leader or Sen. Khaniri, to second.

For clarity, I had requested Sen. Khaniri to second before the Senate Minority Leader walked in.

Sen. Khaniri: Mr. Speaker, Sir, I can see that Sen. Keter is in a hurry to get my brother out of this House.

First, I thank you for the opportunity and also Sen. Keter for allowing me to second this Motion. I rise to second and strongly support the formation of this Committee.

Secondly, I support the membership that has been proposed on this Committee. Looking at the list, it is a proper mix. I see Members from various professions and

backgrounds; Sen. Billow, who we all know, is a renowned accountant. I also see the names of four lawyers in the Committee, a professor of mathematics, an engineer, an administrator of long standing, Sen. Musila, and many others. Social scientists are also included. This Committee is able. We also have a judge; as I said, there are four lawyers. I am confident that they will do a good job. They are all capable.

Mr. Speaker, Sir, as the Mover said, all the 67 of us are capable of serving in this Committee but our Standing Orders are very clear. If we are not considering the matter as a whole House, then we have to pick only 11 of us. That is what the Motion proposes. I encourage the leadership of the House that whenever these duties arise, let it be rotational so that we do not keep seeing the same names because we are all capable. So far, that is what has happened. This is the fourth impeachment Motion and we have not seen any names being repeated on the list. Therefore, we encourage that.

In consideration of this Motion by Murang'a County Assembly, I urge the Members who have been nominated to this Special Committee to remain above board, party interest and look at the issues objectively. The Senate of Kenya which is the first one, that we are all privileged to be Members, has established itself as a House of rules; one that follows the rule of law and abides by all the written laws of this land and international laws.

Mr. Speaker, Sir, Article 181 of the Constitution that you referred to, stipulates very clearly the circumstances under which a governor can be impeached. For instance, gross violation of the Constitution which you alluded to, abuse of office and gross misconduct, physical and mental incapacity and lastly, if he commits a crime under national or international laws.

Mr. Speaker, Sir, you have read the charges. As the Committee considers this Motion, we want it to strictly adhere to these provisions of Article 181 of the Constitution and Standing Order No.68 of the Senate.

Mr. Speaker, Sir, as I second this Motion, I would like to strongly correct what has been appearing in the media, that the Senate had already established a Committee chaired by Sen. Billow and deputized by Sen. Ong'era. That is not the case; it is now that we are setting up the Committee. According to our rules, the Committee will elect their chairperson; it is not automatic. The practice has always been; if it is a governor coming from one coalition, then the Committee should be chaired by a Senator from an opposite coalition and vice versa. The governor in question is the Governor for Murang'a who belongs to the Jubilee Coalition, and I encourage the Committee to follow past practices so that whoever chairs this Committee will be a Member from the opposite coalition.

It is a straight forward Motion as stated by the Mover. I urge my colleagues to support this Motion so that we can put in place this Committee. The law stipulates that we have 10 days; seven days to convene the Session that we are in and the Committee has 10 days to report back; that is 17 days in total. Already six days have lapsed and, therefore, we do not have too much time. I urge my colleagues to support this Motion so that we give this Committee an opportunity to look at the charges and report back to us so that we take a decision as a Senate.

Mr. Speaker, Sir, with those remarks, I beg to second.

(Applause)

(Question proposed)

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I rise to support this Motion and underscore, as my colleagues have said, that it follows in the tradition of this House where when such matters have come, we have rallied together in defence of the interests of the counties to debate such a Motion, having formed a very able Committee of 11 senators.

As the Chairperson of the inquiry into Kenya Airways, I will lose two of my most capable Members at a time when we most need them. However, I think they are being outsourced to a cause that is really worth it; that is, Sen. Billow and Sen. Sang. I hope that although this will be a very demanding exercise by my two very able colleagues; that somehow, they will find time in between to attend to another equally important undertaking by this House at this demanding moment.

Mr. Speaker, Sir, I congratulate you and the Members of the County Assembly for having brought this Motion before us. I hope that as the Senate Deputy Majority Leader has pleaded with us, we shall all support this Motion and make sure that we carry out our job diligently, objectively and from a stand point of principle.

I beg to support.

Sen. Mositet: Mr. Speaker, Sir, I rise to support that the Members who have been elected to this Committee are very capable; my able Chairperson, Sen. Billow, Sen. Chiaba and the rest. I am sure that they will see to it that justice is done through the process so that in case this governor messed, then the people of Murang'a County will be notified through the Senate.

Knowing very well that quite a number of impeachments have come through this House, it is quite worth to know that the matter is already in the Senate. Even if elders try to sit in Murang'a County and suggest that they can try to sort it out, that is impossible. It is this House that will make sure that the proper process is followed and if Governor Wa Iria is innocent, then this House will end up setting him free.

Mr. Speaker, Sir, I like the composition and I do not doubt any Member of this Committee. However, knowing very well that the Governor comes from the Jubilee side, I expected that the membership of those from the Minority side to be the majority in this Committee. On the other hand, I expected the Chairperson to be from the Minority side so that, at least, justice can be done. The way it is right now, it is inclined; the Governor, coming from the Jubilee side, majority of the Members are from the Jubilee side. All said, I do not doubt the capability of the Members. I know these are honourable Members who will make sure that we have the report within these 10 days.

With those few remarks, I support.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. This is a fairly straight forward Motion which requires 24 votes. I can see the Senate is intact and I have seen almost 15 to 20 requests there. Since this Report might come back and that is the point at which we can debate it, why do we not also limit the time of interventions, so that we can just make one or two remarks and get this House to approve this Motion?

The Speaker (Hon. Ethuro): Is he reading the mood of the House?

Hon. Senators: Yes.

The Speaker (Hon. Ethuro): I did not want to regulate because Members had already self-regulated themselves. Since you have raised the matter, I will not entertain more than three minutes per Member.

(An hon. Senator spoke off record)

The Speaker (Hon. Ethuro): I said: “Not more than”. So, you can decide to do half a minute.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. The Senate must recognise that this impeachment is here because the High Court has refused an injunction against the Senate. So, that is a milestone. In my county, had the Judiciary acted the same, maybe we would not have been in the same position that we were in a few months ago.

Two, I agree with the Senators who have suggested that the majority membership of this Committee and the Chairperson should come from the Coalition for Democracy and Reforms (CORD).

Three, I express my disappointment that this communication was already in the press long before the Speaker communicated.

Lastly, we do not expect the Committee to do what the Kiala Committee did, where they disagreed with their own findings here.

Sen. Kagwe: Mr. Speaker, Sir, I rise to support the Motion and make two points. The first has to do with the public perception that committees are created to remove or keep a governor. Even in the media, that is the perception that is given. I think it is important to make it clear that the Committee will simply make recommendations to the House. As has happened in the impeachment process in the past, the House did not agree with the Committee. It is important for us, as a House, to communicate that publicly.

Secondly, I would like to support the Committee Members but also warn them that this is a *quasi*-judicial impeachment. Consequently – having gone through a process like this as Chairperson of a similar Committee – there will be interference from all kinds of quarters. Let nobody act here like the proverbial ostrich that buries its head in the sand. Let us be aware that this will happen. Let us be aware that there are stakeholders and interest groups that will try to interfere with the process. Consequently, I hope and pray that our colleagues will rise above all those interest groups, party interests, all sorts of attempts to introduce abuse into the Senate process and come up with a process that can be held high tomorrow by both the people of Murang’a as well as Governor Iria.

I support.

Sen. Boy Juma Boy: Asante sana Bw. Spika kwa kunipa nafasi niunge mkono Hoja hii. Nimeitazama Hoja yenyewe na kuisikiliza ilipokuwa ikipendekezwa kwetu na nimeridhika na majina ya Maseneta ambao wameteuliwa kuhuduma katika Kamati hii. Kwa maoni yangu, Hoja hii na Kamati hii, ina uwezo kupita maelezo kwa sababu Maseneta wote ambao ni wanachama, hakuna ambaye anaweza kununulika kirahisi. Nikiwatazama vizuri, nina hakika hakuna yule ambaye anaweza kununulika; hayumo!

(Laughter)

Fikira zangu ni kuwa na uhakika ya kwamba ---

Sen. Billow: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it Sen. Billow?

Sen. Billow: Mr. Speaker, Sir, you heard the Senator for Kwale saying in very eloquent Swahili that there are Senators who can be bought; however, they are not on the list. That is a very serious statement that in this House, there are distinguished Senators who have integrity problems. Could the Member either substantiate or withdraw that statement because it injures the reputation and the dignity of the House?

The Speaker (Hon. Ekwere Ethuro): Order Senators. I do not know what Sen. Boy Juma Boy may have to say but, Sen. Billow, I think you are just mesmerized by the eloquence of the language and the flow. When he says the Senators who can be bought are not in the list, he did not say where they are. They could not be on the list because from a random sample, we could not get from the total population of the Senators.

Sen. Boy Juma Boy: Bwana Spika---

Sen. Haji: Jambo la nidhamu Bw. Spika, Seneta alisema Maseneta ambao wako hapa hawawezi kununuliwa kwa urahisi. Je kuna wengine ambao wanaweza kununuliwa “kwa ghali”?

The Speaker (Hon. Ekwere Ethuro): Seneta Boy Juma Boy, sasa hapo siwezi kukusaidia.

Sen. Boy Juma Boy: Bw. Spika, nimefurahi kwa sababu inaonekana sasa Kiswahili chafuatiliwa vizuri kwa sababu sasa ndio tunapoenda katika utamu wake na ladha yake. Nilichosema mimi ni kwamba “sifikirii”. Kufikiria ni kwamba jambo hilo haliko katika mawazo yangu. Kwa hivyo, niliposema sifikirii kwamba kuna Seneta anayeweza kununuliwa kiurahisi, ni fikira ambayo haipo wala jambo hilo haliko. Ni fikira ambazo nimezileta. Yaani hata hauwezi kuliwaza jambo kama hilo. Ninawashukuru kwa maana yaonekana kidogo Kiswahili chaanza kufufuka ndani ya Seneti.

Bwana Spika, nikiendelea ni kwamba Hoja hii ni ya moja kwa moja---

The Speaker (Hon. Ekwere Ethuro): Nidhamu, Sen. Boy Juma Boy. Umeulizwa na Seneta Billow; jibu hata hilo. Umejibu tu swala la Seneta Haji.

Sen. Boy Juma Boy: Bw. Spika, ninafikiri nimelijibu vizuri. Nimesema ningieleza kwamba haimo katika mawazo yangu kwamba kuna yeyote anaweza kununulika. Lakini kama amelielewa kimakosa, basi wacha nimuweke katika hali ya usawa kwamba asiwe na taswishi. Naona Kiswahili hapo kimeeleweka. Nimeliiondoa tamshi hilo. Kwa hali hiyo, naiunga mkono Kamati hii na ningependa kusesitiza kwamba nimehudumu katika moja ya Kamati hizi; zina kazi nyingi, zina muda mrefu, zina muda ambao wakati mwingine Kamati zinafika mpaka usiku wa manane, kwa hivyo, ni kazi ya kujitolea.

Kwa hayo machache, naunga mkono. Asante.

Sen. Wamatangi: Thank you Mr. Speaker, Sir. I rise to support the formation of this Committee. However, I would like to raise two quick issues on matters of procedure.

First, on Standing Order No. 68 1 (a):-

“The Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor.”

Mr. Speaker, Sir, for purposes of the future, we need to consider as a House whether it would be necessary for us to correct that language because, we need to ask ourselves whether the reading of the charges constitutes a hearing; the language to say that the Speaker will convene the Senate to hear the charges. Will that amount to hearing?

Secondly, on Standing Order No. 68 (2) (b), I would want to urge the Committee - because the Standing Order is very clear that:-

“The Committee report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.”

Mr. Speaker, Sir, I have previously sat in a Committee. And further looking at Standing Order 68 (4) (b), it says:-

“If any of those charges have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the charges.”

Mr. Speaker, Sir, one of the issues that have constantly arisen is when the report by the Committee is presented to the House. For example, on the 10th day, and we all note, for example, in the charges read by you today, they are very weighty charges. It raises a major issue if that report is presented to the Members, for example, as it is normally done in the morning and voting is supposed to be done in the afternoon. Does that constitute enough time for Members to read the report, conceptualize the charges, form an opinion and vote objectively?

Mr. Speaker, Sir, that is an issue we need to look at and implore upon the Committee, if possible they work diligently, day and night, and ensure that within that window of 10 days, they can give us ample time when they present the report for us to be able to vote with information after reading the report.

Thank you.

Sen. Murungi: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Motion. The charges which you have read to us are very serious. Many of them are of a criminal nature. So, I am very happy that our leaders in the House have given the best in this Committee. If you look at the list, it is very impressive.

Mr. Speaker, Sir, the Members of this Committee include the following; Sen. Billow Kerrow, the Chairman of the Finance, Commerce and Budget Committee; we have a Professor of Mathematics, an Engineer and several lawyers including a retired Judge, Sen. Madzayo. We have no doubt that this Committee will treat these very serious charges in a very serious manner. As you have said in these proceedings before, the Senate itself is on trial, because the governors will be looking at us, *wananchi* will be seeing whether we are protecting the monies that we are taking to the counties or whether we are letting the governors get off with massive looting of resources in this country.

Mr. Speaker, Sir, we have to tread very carefully because this goes to the core of our function of oversight under Article 96 of the Constitution. I know this governor has appeared before one of the committees and he made some remarks which the Senators were not happy about, because he had said that he is not a tourist attraction to be seen by the Senate. I want to urge the Committee to ignore those remarks and concentrate on the charges which the Speaker has read before this House today, because those other

annoying remarks are irrelevant and are extraneous matters which should not influence the decision of this Committee.

Mr. Speaker, Sir, I have no doubt we are going to act impartially, and I want to support this Committee.

Thank you.

The Speaker (Hon. Ethuro): Hon Senators, I will allow you to contribute in not more than two minutes. We will bring this debate to a closure at 12.25 p.m.

Proceed, Sen. Mohamoud.

Sen. Mohamoud: Thank you, Mr. Speaker, Sir. I would like to support the Select Committee because it consists of men and women of substance and I am sure that they will make us proud. I would also like to support the sentiments of Sen. Boy Juma Boy that there are no cheap Senators in the Eleventh Parliament. I am sure that they will be fair in their deliberations.

Sen. Sijeny: Mr. Speaker, Sir, I rise to support this Motion and congratulate the people of Murang'a who have demonstrated maturity and confirmed that they are peace loving Kenyans. They have approached the big sister, the Senate, to help them deal with their issues as enshrined in the Constitution.

Secondly, this demonstrates that the Senate is doing its work well. We have sensitized the people and they are aware of their rights and how to protect their property and their taxes.

Mr. Speaker, Sir, this exercise will help in streamlining the implementation of the Constitution and the enactment of all the other relevant laws by keeping proper systems so that in future, the people who will be in charge of the counties will find good systems that will not be exploited by unscrupulous leaders. I also commend the team. I have seen that there are "no nonsense" Legislators in this Committee. I am sure that they will do us proud.

I beg to support.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I support the formation of the Committee. I urge the Members who I believe will retire from this Sitting for their first meeting, to observe the precedence already set when we had the issue of Kericho County, a Jubilee Governor impeachment, the Committee was chaired by a Senator from CORD. When we had the hearing of the Machakos Deputy Governor, who is from CORD, it was chaired by the distinguished Senator for Nyeri County. I want that precedence to be followed. The Chair of this Committee should come from CORD and a Vice Chairperson from Jubilee, so that we continue with the precedence set.

Secondly, listening to the charges that you read to this Chamber, they are extremely serious. As you were reading, one would have thought that it was an Agatha Christie or James Hardley Chase novel. It makes one think about an Italian joke that "Africans have given corruption a very bad name". Even when you want to do things in a bad way, you should use some brains, like the former President Mwai Kibaki said. If what you read to us is true, it is very unfortunate. Let us proceed on the basis that Governor Mwangi wa Iria is innocent until proven guilty. We should substantiate the allegations or reject them. Let us not be clouded by any press reports or happenings in other counties like the wheelbarrows of Bungoma. We are dealing with Murang'a County

alone. The others will be dealt with when they come. I urge the Committee to act fairly, judiciously and bring a report that this House will be proud of.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Hon. Senators, in order to save on time, I call upon the Mover to reply.

Sen. Keter: Mr. Speaker, Sir, I beg to reply.

The Speaker (Hon. Ethuro): This is a matter concerning counties. We will therefore proceed to vote by county delegations.

(The Division Bell was rung)

(The Bar was drawn and the doors closed)

DIVISION

ELECTRONIC VOTING

(Question that, The Senate resolves to establish a Special Committee to investigate the proposed removal from office of the Governor of Murang'a County, put and the Senate proceeded to vote by county delegations)

AYES: Sen. Adan, Isiolo County; Sen. Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma boy, Kwale County; Sen. Kagwe, Nyeri County; Sen. Haji, Garissa County; Sen. G.G. Kariuki, Laikipia County; Sen. Hassan, Mombasa County; Sen. Hargura, Marsabit County; Sen. Kembu-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. Leshore, Samburu County; Sen. M. Kajwang, Homa Bay County; Sen. Moi, Baringo County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Musila, Kitui County; Sen. Murungi, Meru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Omondi, Kakamega County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

NOES: Nil.

The Speaker (Hon. Ethuro): The results of the Division areas follows:-

AYES: 30

NOES: Nil

ABSTENTIONS: Nil

So, the "Ayes" have it.

(Question carried by 30 votes to nil)

The Speaker (Hon. Ethuro): You may now draw the Bar and open the Doors. The Chair directs the Committee to organize its first meeting in the course of today for purposes of electing the Chair and the Vice-Chair. The Clerk will assist in organizing the meeting.

ADJOURNMENT

The Speaker (Hon. Ethuro): Hon. Senators, having exhausted the Business for this morning, the House stands adjourned until today afternoon, 28th October, 2015 at 2.30p.m.

The Senate rose at 12.35p.m.